

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Verizon Telephone Companies)	WC Docket No. 02-237
Section 63.71 Application to Discontinue)	
Expanded Interconnection Service)	
Through Physical Collocation)	

OPPOSITION OF QWEST COMMUNICATIONS CORPORATION

Qwest Communications Corporation (“QCC”), pursuant to the Federal Communications Commission’s (“Commission” or “FCC”) *Public Notice*,¹ hereby files this opposition to the Section 63.71 Application of the Verizon Telephone Companies (“Verizon”) to withdraw physical collocation services from its interstate tariffs.² Verizon’s proposed withdrawal of its interstate collocation tariffs would result in an unauthorized and non-consensual modification of QCC’s interconnection agreements with Verizon. Verizon should not be permitted to make these modifications, and should not be permitted to withdraw its interstate collocation tariffs until it has made all necessary modifications to its interconnection agreements or otherwise taken steps to insure that it has not attempted to unilaterally modify those agreements.³

Because of the manner in which Verizon has constructed its interconnection agreements with competitive local exchange carriers (“CLECs”), including QCC, key parts of Verizon’s interstate physical collocation tariffs have been incorporated by reference into Verizon’s interconnection agreements. While Verizon’s Application promises to “grandfather” existing

¹ *Public Notice*, DA 02-2038, rel. Aug. 19, 2002.

² Section 63.71 Application, filed Aug. 16, 2002.

³ It is possible that Verizon intends that the instant Application will not affect those aspects of the interconnection agreements that have been incorporated into those tariffs. If so, Verizon can explain this matter in its reply comments.

physical collocation premises purchased under its interstate collocation tariffs, this promise does not extend to certain terms and conditions of those tariffs, especially DC power.⁴ DC power rates, even for “grandfathered” premises, are to be referenced in Verizon’s intrastate tariffs. As the intrastate collocation tariffs contain rates for DC power that are considerably higher than the tariffed rates on which QCC currently relies (and for which QCC had contracted), withdrawal of the Verizon collocation tariffs would result in an unauthorized price increase to QCC for DC power. The proposed “grandfathering” also does not continue QCC’s contract rights for physical collocation space which a CLEC is authorized to occupy under an interconnection agreement but has not yet done so. This means that Verizon’s withdrawal of its interstate physical collocation tariffs results in the dramatic and unauthorized modification of its interconnection agreements with QCC. Accordingly, QCC requests that the Commission deny Verizon permission to withdraw its interstate collocation tariffs until after it has taken steps to insure that collocators continue to receive the benefits of the binding agreements they entered into with Verizon for collocation space and collocation services, including DC power.

I. THE RATES AND PRACTICES IN VERIZON’S INTERSTATE COLLOCATION TARIFFS ARE ALSO PART OF VERIZON’S INTERCONNECTION AGREEMENTS WITH QCC.

QCC operates as a CLEC in a number of states, including states where Verizon provides incumbent local exchange service. In these states QCC relies on its ability to collocate its equipment in Verizon’s central offices. Collocation is purchased pursuant to Section 251(c)(6) of the Telecommunications Act. In its interconnection agreements with QCC, Verizon does not generally specify the terms and conditions of the collocation services QCC purchases. Verizon

⁴ Verizon has also promised to issue “credits” for space preparation changes in the New England states only.

instead incorporates the terms and conditions of its interstate and intrastate tariffs by reference into the interconnection agreements.

For example, in QCC's March 19, 1999 interconnection agreement with Verizon in Virginia, it is provided that "Bell Atlantic shall provide [QCC] Collocation in accordance with the terms of its FCC and Virginia Collocation tariffs and the provisions of this Attachment V."⁵ The pricing provision provides that the non-recurring and recurring charges for "collocation and related services for Interconnection at a Bell Atlantic End Office, Tandem Office or Serving Wire Center" are set "per interstate [Bell Atlantic FCC No. 1, Section 19] expanded interconnection tariffs." Similar provisions appear in QCC's interconnection agreements with Verizon in the District of Columbia, New Jersey, Maryland, Massachusetts and Pennsylvania.

QCC's New York interconnection agreement with Verizon specifically references Verizon's interstate tariffs. The contract specifies that the collocation provisions in the contract are only for "collocation for intrastate purposes," and provides that, if QCC "requests collocation for interstate purposes, the same shall be governed by applicable FCC tariffs, and whether a purpose constitutes interstate or intrastate shall be determined according to applicable FCC rules and tariffs."⁶

The uniform model of these interconnection agreements is Verizon's incorporation of interstate tariff provisions dealing with collocation into the agreements rather than inclusion of the collocation provisions in the agreements themselves.

⁵ Attachment V to the Agreement. QCC, in the past, has generally chosen to opt into the interconnection agreements of other CLECs pursuant to Section 252(i) of the Act rather than attempting to individually negotiate agreements with incumbent local exchange carriers ("ILECs").

⁶ March 5, 1999 interconnection agreement between QCC and Bell Atlantic-New York, Section 2.1.

II. QCC'S INTERCONNECTION RIGHTS COULD BE SUBVERTED IF VERIZON IS PERMITTED TO WITHDRAW ITS INTERSTATE COLLOCATION TARIFFS.

Verizon proposes to “grandfather” its existing customers under its interstate collocation tariffs, and to relegate future customers either to interconnection agreements under Section 251(c) of the Act or to intrastate collocation tariffs.⁷ For several reasons, this approach would not provide QCC with the protections guaranteed to it under its interconnection agreements and Sections 251 and 252 of the Act.

Most significantly, the prices provided in Verizon’s intrastate collocation tariffs are often considerably higher than is the case of its interstate collocation rates filed with the FCC. For example, in the critical area of DC power, the rate increase that would result if QCC were forced to purchase DC power at the prices specified in one of Verizon’s intrastate tariffs could be dramatic. For QCC’s collocation sites ordered out of Verizon’s Tariff FCC No. 11, Verizon charges \$6.44 per amp in New York/Connecticut and \$4.88 per amp in the New England states. By contrast, Verizon’s intrastate tariffed rates for DC power in New York range from \$19.56 - \$19.64 per amp, depending upon the amount ordered. In Massachusetts, the rates range from \$17.78 - \$31.82 per amp, depending upon the zone and the amount of power ordered. Comparison of the rates within other Verizon states show the following:

Verizon Tariff FCC No. 1 - \$174.73 per 10 amps in DC, DE, MD, NJ, PA, VA and WV. By contrast, the rates for DC power in Verizon’s intrastate tariffs in states covered by Verizon’s Tariff FCC Nos. 1 and 11 are as follows:

⁷ See Verizon Section 63.71 Application at 2, 5.

Intrastate RateStaff Tariff Citations for DC PowerState – RateState Tariff Section

PA - \$19.56

PA 218 2.J.1.c

MD - \$19.56

MD 218 2.J.1.c

VA - \$19.56

VA 218 2.J.1.c

NJ - \$14.18

NJ 4 II.J.1.d

NY - \$19.56- \$19.64,
depending upon the amount of power ordered

NY 8 35.15.10

MA - \$17.78 - \$31.82,
depending upon the zone and the amount of power ordered

MA 17 5.2.3

If Verizon's action here were to cause QCC to pay intrastate tariffed rates for DC power to collocation space for which QCC is currently paying the rate set forth in Verizon's interstate tariffs incorporated into its interconnection agreements, the additional cost to QCC would be in excess of \$1.6 million annually. Because Verizon's "grandfathering" proposal does not apply to DC power, grant of its application could increase QCC's DC power bills well beyond the amount called for in its interconnection agreements.

Moreover, even in the absence of these dramatic increases from the prices for DC power agreed to in the QCC interconnection agreements caused by Verizon's unequal "grandfathering" proposal, there are other rights contracted for QCC that Verizon's proposal would seem to purport to cancel. In the New York Agreement, for example, the Verizon interstate tariff provides the entirety of QCC's contracted terms. Withdrawal of the interstate collocation tariffs by Verizon as proposed in the instant application would necessitate renegotiation of QCC's interconnection agreements in this area for all new (and possibly existing) collocation sites

needed by QCC. While such renegotiation may in fact be reasonable under some circumstances, Verizon's proposal would bypass renegotiation altogether.

III. WITHDRAWAL OF VERIZON'S INTERSTATE COLLOCATION TARIFFS WITHOUT MAKING APPROPRIATE ACCOMMODATION FOR THE INTERCONNECTION AGREEMENTS THAT INCORPORATE THOSE TARIFFS WOULD CONSTITUTE AN UNLAWFUL MODIFICATION OF VERIZON'S INTERCONNECTION AGREEMENTS IN VIOLATION OF THE TELECOMMUNICATIONS ACT.

It is critical under the Telecommunications Act that CLECs have the ability to enter "binding" agreements with ILECs. For example, Section 252(a)(1) of the Act permits voluntary agreements to be filed for approval with state commissions without regard to the provisions of Section 251(c) so long as they are both binding and contain a "detailed schedule of itemized charges for interconnection and each service or network element included in the agreement."⁸ Compliance with Section 271 of the Act (the precondition for entry by a Regional Bell Operating Company ("RBOC") into the long distance market) is tested by whether the RBOC "has entered into one or more binding agreements that have been approved under section 252 . . . specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities."⁹ While an agreement can be binding in nature even if it leaves the final prices of some services to be set by a regulator in a future proceeding, the Commission has never retreated from the statutory language or suggested that an agreement can be binding under the statute if it is tied to a tariff that the RBOC is free to withdraw in its entirety.¹⁰ For an agreement to be binding on the parties, each party must be able to rely on the

⁸ 47 U.S.C. § 252(a)(1).

⁹ 47 U.S.C. § 271(c)(1)(A).

¹⁰ See *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order, 12 FCC Rcd. 20543, 20582 ¶ 72 (1997), for a discussion of binding agreements in the context of a Section 271 application.

fact that the other party will keep its end of the bargain. In this case, if Verizon is able to unilaterally increase the price that QCC pays for interconnection services by withdrawing a tariff incorporated by reference in an interconnection agreement, the agreement is not binding and Verizon is not in compliance with the Telecommunications Act.¹¹

IV. CONCLUSION

Because of Verizon's desire to incorporate its interstate collocation tariffs into its interconnection agreements, Verizon's efforts to withdraw its interstate collocation tariffs constitute an unlawful attempt to modify its interconnection agreements without QCC's consent. Verizon's Application should be denied. Verizon cannot withdraw its interstate collocation tariffs until after it has made appropriate accommodations for its CLEC customers whose binding interconnection agreements incorporate provisions of those tariffs.

Respectfully submitted,

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September 18, 2002

¹¹ This is not a situation in which a tariff was changed pursuant to the direction of a regulation and a valid change-of-law contractual provision applied. In the instant case Verizon's action is entirely voluntary and unilateral.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **OPPOSITION OF QWEST COMMUNICATIONS CORPORATION** to be filed with the FCC via its Electronic Comment Filing System, and a copy of the **OPPOSITION** to be served, via e-mail, on the parties listed below.

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September 18, 2002

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WC02-237.doc
Updated 9/18/02